



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Regional Enforcement Division Directors

FROM: Deputy Assistant Administrator for Water Enforcement (EN-335)

SUBJECT: Transfer of Authority Over Federal Facilities to NPDES
States - GUIDANCE MEMORANDUM

INTRODUCTION

On March 10, 1978, the General Counsel and the Assistant Administrator for Enforcement jointly issued a policy guidance memorandum entitled "State Regulation of Federal Facilities Under the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)" (copy attached - Tab A). This memorandum requires that all NPDES States assume program responsibility over the Federal facilities within their jurisdictional boundaries. To date four NPDES States have assumed this responsibility, and the process to transfer NPDES authority over Federal facilities is under way in several other States. The purpose of this memorandum is to establish a uniform method for processing these transfers of authority. While the March 10 memorandum sets maximum time limits for accomplishing this transfer, it is my hope that it will be done as expeditiously as possible.

RECOMMENDED PROCESSING STEPS

A. Initial Contact with State

A letter should be sent to each of the NPDES State Directors in your Region reminding them of the requirement that they assume NPDES program responsibility over Federal facilities and asking that this be done expeditiously. This letter should request an Attorney General's statement as to whether the State has adequate authority to implement all NPDES program responsibilities over Federal facilities (i.e., permitting, monitoring, inspections, etc.). It can be very helpful to the State for EPA to conduct an independent analysis of these legal issues and to include a summary of this analysis in your letter. However, an EPA analysis of State authorities cannot serve as a substitute for an Attorney General's statement.

Prior to sending the letter, the Memorandum of Agreement (MOA) between EPA and the State should be reviewed to determine whether it should be modified. If the MOA restricts the State's authority over Federal facilities in any way it must be changed. The letter sent to the State should specify whether the MOA needs to be modified. If a modification is necessary, a proposed document (see attached example - Tab B) should also be included.

B. No Modification to MOA Necessary

If no modification to the MOA is necessary to transfer authority over Federal facilities to the State and the Attorney General's Statement indicates that the State has the adequate legal authority, proceed as follows. An Action Memorandum (see attached sample - Tab C) should be sent from the Regional Administrator to the Assistant Administrator for Enforcement recommending that the State's assumption of Federal facilities authority be approved. This action memorandum should include the following attachments: a copy of the State Attorney General's opinion, copies of correspondence with the State Director, a copy of the letter originally sent by the Administrator approving the State's NPDES program, a draft letter from the Assistant Administrator for Enforcement approving the transfer of authority (sample attached - Tab D), and any other relevant documents (e.g., a memorandum from Regional Counsel evaluating the State's legal authority).

This package will then be sent to the Deputy Assistant Administrator for Water Enforcement for concurrence and, if everything is in order, sent to the Assistant Administrator for Enforcement for a decision on approval. (The authority to approve State NPDES program modifications for Federal facilities coverage has been delegated to the Assistant Administrator for Enforcement.) The transfer of authority takes effect when the approval letter is signed and transmitted by the Assistant Administrator.

C. Modification to the MOA is Necessary

When it is necessary to modify the MOA to transfer Federal facilities coverage to a State the following additional steps should be taken. After receiving the favorable Attorney General's statement and reaching agreement on the MOA modification, public notice (sample attached - Tab E) should be issued and an opportunity to comment provided. The public notice should be mailed to all interested people (both from EPA's and the State's mailing lists) and should be published in the largest newspapers in the State. It should provide a 30-day comment period and indicate that a hearing will be held if sufficient interest is expressed.

After the close of the public comment period or after a hearing, if one is held, an Action Memorandum should be prepared as described above but with the following additional attachments: a copy of the public notice, a copy of all comments received or a summary of the

comments, and three originally signed copies of the document modifying the MOA. If any other modifications to the MOA are included the Assistant Administrator cannot approve the package and the Action Memorandum should be sent to the Administrator (with a concurrence block for the Assistant Administrator for Enforcement). In this case the Action Memorandum should also include a discussion of the other proposed MOA changes.

This package should be forwarded to Headquarters and will be processed as described above.

D. If State Indicates it Lacks Authority

If the State Attorney General indicates a lack of authority over Federal facilities, the State is required to correct this deficiency within time limits to be established in forthcoming revised NPDES regulations. The specific legal problem should be identified and a letter sent to the State advising it of the need to correct the deficiency. Please coordinate the preparation of any such letter with my office. Likewise, if the State is reluctant or uncooperative the Region should keep this office informed. If you have any questions or need additional information please contact David Schnapf (755-0750) of the Permits Division.



Jeffrey G. Miller

Attachments